UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
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MANUEL FERNANDEZ,

Plaintiff,

-against-

KISCO EXPRESS SERVICE, INC. d/b/a KES TAXI DISPATCH and MIGUEL A. DUARTE, individually

Defendants.
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COMPLAINT

ECF CASE

Plaintiff Manuel Fernandez ("Fernandez" or "Plaintiff"), by his attorneys, The Law Offices of Jacob Aronauer, complaining of Kisco Express Service, Inc., d/b/a KES Dispatch and Miguel A. Duarte (collectively the "Defendants"), alleges the following:

NATURE OF THE ACTION

1. This is a civil action brought by Plaintiff to recover unpaid overtime compensation under the Fair Labor Standards Act ("FLSA") and New York Labor Law ("NYLL"). Plaintiff worked at KES Dispatch, in Mount Kisco, New York, a taxi service that is owned, controlled and operated by Miguel A. Duarte.

2. Plaintiff brings this action to remedy violations of the wage-and-hour provisions of the FLSA and the NYLL that occurred at KES Taxi Dispatch.

3. Plaintiff also brings this action under the Wage Theft Protection Act, for Defendants' failure to provide written notice of wage rates in violation of said laws.

4. Plaintiff seeks injunctive and declaratory relief against Defendants' unlawful actions, compensation for their failure to pay overtime wages, and liquidated damages,

compensatory damages, pre-judgment and post-judgment interest, and attorneys' fees and costs, pursuant to the FLSA and NYLL.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action under 28 U.S.C. § 1331, 29 U.S.C. §§ 216(b)(c), and 217; and 28 U.S.C. § 1337.

6. This Court has jurisdiction over the New York state law claims under the principles of supplemental jurisdiction.

7. Venue is proper in this district under 28 U.S.C. § 1391(b)(c), because all or a substantial part of the events or omissions giving rise to the claims occurred herein.

PARTIES

Plaintiff

8. Plaintiff is and was at all times relevant hereto an adult individual residing in Westchester County, New York.

9. Plaintiff worked at KES Dispatch ("Kisco Express") from on or about March 1, 2012 until on or about January 7, 2017.

10. Plaintiff was employed at Kisco Express as a taxi dispatcher. Plaintiff primarily maintained the order of the cabs at the taxi stand and dispatched vehicles and drivers to meet customers' transportation needs.

11. Plaintiff was a covered employee within the meaning of the FLSA and the NYLL.

Defendants

12. Defendant Kisco Express is a New York corporation with its principal place of business in Westchester, New York.

13. On information and belief, for approximately the last 15 years Defendant Miguel A. Duarte ("Duarte") has owned and maintained control of Kisco Express in Westchester, New York.

14. Duarte is a person engaged in business in Westchester County, who is sued individually in his capacity as an owner, officer and/or agent of Kisco Express. Miguel A. Duarte exercised and continued to exercise sufficient control over Kisco Express to be considered Plaintiff's employer under the FLSA and NYLL. At all times material hereto, Duarte had the authority to hire and fire employees and established and maintained policies regarding the pay practices at Kisco Express.

15. At all relevant times, Defendants jointly employed Plaintiff.

16. At all relevant times, Defendants had and have substantial control over Plaintiff's working conditions and the practices alleged herein.

17. At all times relevant to this action, Kisco Express was an "enterprise engaged in interstate commerce" within the meaning of the FLSA.

18. Defendant Kisco Express has (1) employees engaged in commerce or in the production of goods for commerce and handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person; (2) an annual gross volume of sales in excess of $500,000.00.

FACTS

Plaintiff Manuel Fernandez's
Employment at Kisco Express

19. From approximately March 1, 2012 until January 7, 2017, Plaintiff was employed, without interruption, by Defendants.

20. Plaintiff was employed as a taxi dispatcher. Plaintiff's duties were to maintain the order of the cabs at the taxi stand and to dispatch vehicles and drivers to meet customers' transportation needs.

21. Throughout his employment with Defendants, Plaintiff was scheduled to work more than 40 hours each week.

22. Throughout his employment with Defendants, Plaintiff was not paid overtime. Rather, Plaintiff was paid a fixed weekly salary that was not inclusive of overtime.

23. Throughout Plaintiff's employment, Defendants did not require Plaintiff to "clock in" or use any other formal time tracking method with respect to his hours.

24. Throughout Plaintiff's employment, Defendants paid Plaintiff each week for his prior week's work with cash.

25. Throughout Plaintiff's employment, Defendants never provided Plaintiff with any notation of the hours he worked.

26. Throughout Plaintiff's employment, Defendants never provided Plaintiff with any documentation as to his hours or his rate of pay.

27. Throughout Plaintiff's employment, Defendant Miguel A. Duarte never discussed overtime work or what constituted Plaintiff's overtime rate of pay with Plaintiff.

Plaintiff Manuel Fernandez's Work
Schedule and Salary at Kisco Express

28. From approximately March 1, 2012 through January 7, 2017, on behalf of Defendants, Plaintiff worked at Kisco Express seven (7) days per week.

29. From approximately March 2012 through March 2016, Plaintiff worked twelve (12) hours per day, from 7:00 p.m. to 7:00 a.m.

30. From approximately April 2016 through January 2017, Plaintiff worked ten (10) hours per day, from 7:00 p.m. to 5:00 a.m. each day.

31. Throughout the course of Plaintiff's employment, Plaintiff did not receive meal breaks.

32. From approximately March 2012 through March 2016, Plaintiff received a salary of $643 per week.

33. From approximately April 2016 through January 2017, Plaintiff received a salary of $720 per week, not inclusive of overtime.

Defendants' Violations of the Wage Theft Protection Act

34. The NYLL and Wage Theft Prevention Act require employers to provide all employees with a written notice of wage rates.

35. Throughout the relevant time period, Defendants paid Plaintiff's wages without any accompanying statement listing the overtime rate or rates of pay, the number of regular hours worked and the number of overtime hours worked, gross wages, deductions, allowances, if any, claimed as part of the minimum wage, and net wages.

36. Plaintiff was never given a notice containing the rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece commission, or other; allowances, if any, claimed as part of the minimum wage, including tip, meal, or lodging allowances; the regular pay day designated by the employer in accordance with NYLL section 191; the name of the employer; any "doing business as" names used by the employer; the physical address of the employer's main office or principal place of business, and a mailing address if different; the telephone number of the employer; and anything otherwise required by law.

FIRST CAUSE OF ACTION
Fair Labor Standards Act-Minimum Wages

37. Plaintiff re-alleges and incorporates by reference all allegations in all preceding paragraphs.

38. Defendants have engaged in a widespread pattern, policy, and practice of violating the FLSA, as detailed in this Complaint.

39. At all times relevant, Plaintiff was employed by an entity engaged in commerce and/or the production or sale of goods for commerce within the meaning of 29 U.S.C. §§ 201 *et seq.*, and/or they were engaged in commerce and/or the production or sale of goods for commerce within the meaning of 29 U.S.C. § 203. At all relevant times, each Defendant has employed "employee[s]," including Plaintiff.

40. Defendants were required to pay directly to Plaintiff the applicable federal minimum wage rate for all hours worked.

41. Defendants failed to pay Plaintiff the minimum wages to which he was entitled under the FLSA.

42. Defendants' unlawful conduct, as described in this Complaint, has been willful and intentional. Defendants were aware or should have been aware that the practices described in this Complaint were unlawful. Defendants have not made a good faith effort to comply with the FLSA with respect to the compensation of Plaintiff.

43. Because Defendants' violations of the FLSA have been willful, a three-year statute of limitations applies, pursuant to 28 U.S.C. 201 *et seq*.

44. As a result of Defendants' willful violations of the FLSA, Plaintiff has suffered damages by being denied minimum wages in accordance with the FLSA in amounts to be determined at trial, and is entitled to recovery of such amounts, liquidated damages,

prejudgment interest, attorney fees, costs, and other compensation pursuant to 29 U.S.C. 201 et seq.

SECOND CAUSE OF ACTION
New York Labor Law—Minimum Wage

45. Plaintiff re-alleges and incorporates by reference all allegations in all preceding paragraphs.

46. Defendants have engaged in a widespread pattern, policy, and practice of violating the NYLL, as detailed in this Complaint.

47. At all times relevant, Plaintiff has been an employee of Defendants, and Defendants have been employers of Plaintiff within the meaning of the NYLL 650 *et seq.*, and the supporting New York State Department of Labor Regulations.

48. At all times relevant, Plaintiff has been covered by the NYLL.

49. The wage provisions of Article 19 of the NYLL and the supporting New York State Department of Labor Regulations apply to Defendants, and protect Plaintiff.

50. Defendants failed to pay Plaintiff the minimum hourly wages to which he was entitled under the NYLL and the supporting New York State Department of Labor Regulations.

51. Defendants were required to pay Plaintiff the non-tipped minimum wage for all hours worked from under the NYLL 650 et seq. and the supporting New York State Department of Labor Regulations.

52. Through their knowing or intentional failure to pay minimum hourly wages to Plaintiff, Defendants have willfully violated the NYLL, Article 19, 650 *et seq.*, and the supporting New York State Department of Labor Regulations.

53. Due to Defendants' willful violations of the NYLL, Plaintiff is entitled to recover from Defendants his unpaid minimum wages, liquidated damages as provided by the NYLL, reasonable attorneys' fees, costs and pre-judgment and post-judgment interest.

THIRD CAUSE OF ACTION
FLSA Overtime Violations, 29 U.S.C. §§ 201, *et seq*.

54. Plaintiff re-alleges and incorporates by reference all allegations in all preceding paragraphs.

55. Throughout the relevant time period, Plaintiff worked in excess of forty (40) hours per work week.

56. At all relevant times throughout his employment, Defendants operated under a policy of willfully failing and refusing to pay Plaintiff one and one-half times the regular hourly rate of pay for work in excess of forty (40) hours per workweek, and willfully failing to keep records required by the FLSA, even though Plaintiff was entitled to receive overtime payments.

57. At all relevant times throughout Plaintiff's employment, Defendants have willfully, regularly and repeatedly failed to pay the required overtime rate of one and one-half times his regular hourly rate for hours worked in excess of forty (40) hours per workweek.

58. Defendants' decision not to pay overtime was willful.

59. Plaintiff seeks damages in the amount of his unpaid overtime compensation, liquidated damages as provided by the FLSA for overtime violations, attorneys' fees and costs, and such other legal and equitable relief as this Court deems just and proper.

FOURTH CAUSE OF ACTION
Unpaid Overtime Wages Under New York Labor Law

60. Plaintiff re-alleges and incorporates by reference all allegations in all preceding paragraphs.

61. At all times relevant to this action, Plaintiff was employed by Defendants within the meaning of NY Labor Law § 652 and 12 NYCRR §142-2.2.

62. Defendants failed to pay Plaintiff the overtime premium of one and a half times the regular hourly rate of pay, in violation of the NY Labor Law.

63. Defendants' failure to pay required overtime was willful.

64. As a result of Defendants' NY Labor Law violations, Plaintiff is entitled to recover from Defendants unpaid overtime wages and liquidated (double) damages, as well as reasonable attorneys' fees and the costs of this action, including interest, pursuant to the NY Labor Law.

FIFTH CAUSE OF ACTION
New York Labor Law – Failure to Provide Annual Wage Notices

65. Plaintiff re-alleges and incorporates by reference all allegations in all preceding paragraphs.

66. Defendants willfully failed to supply Plaintiff with wage notices, as required by NYLL, Article 6, § 195(1), in English or in the language identified by Plaintiff as his primary language, containing Plaintiff's rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; hourly rate or rates of pay and overtime rate or rates of pay if applicable; the regular pay day designated by the employer in accordance with NYLL, Article 6, § 191; the name of the employer; any "doing business as" names used by the employer; the physical address of the employer's

main office or principal place of business, and a mailing address if different; the telephone number of the employer; plus such other information as the Commissioner of Labor deems material and necessary.

67. Through their knowing or intentional failure to provide Plaintiff the wage notices required by the NYLL, Defendants willfully violated NYLL, Article 6, §§ 190 *et seq.*, and the supporting New York State Department of Labor Relations regulations.

68. Due to Defendants' willful violations of NYLL, Article 6, § 195(1), Plaintiff is entitled to statutory penalties of fifty dollars for each workweek before December 29, 2014 and fifty dollars for each workday starting December 29, 2014 that Defendants failed to provide Plaintiff with wage notices, or a total of five thousand dollars each, reasonable attorneys' fees, costs and injunctive and declaratory relief, as provided for by NYL, Article 6, § 198(1-b).

SIXTH CAUSE OF ACTION
New York Labor Law- Failure to Provide Wage Statements

69. Plaintiff re-alleges and incorporates by reference all allegations in all preceding paragraphs.

70. Defendants willfully failed to supply Plaintiff with accurate statements of wages as required by NYLL, Article 6, § 195(3), containing the dates of work covered by that payment of wages; name of employee; name of employer; address and phone number of employer; rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; gross wages; hourly rate or rates of pay and overtime rate or rates of pay if applicable; the number of hours worked, including overtime hours worked if applicable; deductions; and net wages.

71. Through their knowing or intentional failure to provide Plaintiff with the wage statements required by the NYLL, Defendants willfully violated NYLL, Article 6, §§ 190 *et seq*., and the supporting New York State Department of Labor Relations regulations.

72. Due to Defendants' willful violations of NYLL, Article 6, § 195(3), Plaintiff is entitled to statutory penalties of one hundred dollars for each workweek before December 29, 2014 and two hundred and fifty dollars for each workweek starting December 29, 2014 that Defendants failed to provide Plaintiff with accurate wage statements, or a total of five thousand dollars each, reasonable attorneys' fees, costs and injunctive and declaratory relief, as provided for by NYLL, Article 6, § 198(1-d).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the entry of an order and judgment against Defendants Kisco Express Service, Inc. & Miguel A. Duarte, jointly and severally, as follows:

(a) Damages for the unpaid overtime wages and minimum wages due to Plaintiff, in an amount to be determined at the trial of the action, liquidated damages as provided by the FLSA, interest, attorneys' fees, and the cost of the action;

(b) Damages for unpaid overtime wages and minimum wages due to Plaintiff in an amount to be determined at the trial of the action, liquidated damages as provided by the NYLL, interest, attorneys' fees, and the cost of the action;

(c) Penalties of fifty dollars for each workweek before December 29, 2014 and fifty dollars for each workday starting December 29, 2014 that Defendants failed to provide Plaintiff with a wage notice, or a total of five thousand dollars, as provided for by NYLL, Article 6, § 198;

(d) Penalties of one hundred dollars for each workweek before December 29, 2014 and two hundred and fifty dollars for each workday starting December 29, 2014 that Defendants failed to provide Plaintiff with accurate wage statements, or a total of five thousand dollars as provided for by NYLL, Article 6, § 198;

(e) Awarding damages as a result of Defendants' failure to furnish a notice at the time of hiring pursuant to NYLL;

(f) For prejudgment interest on the foregoing amounts;

(g) For his costs and disbursements of the action, including attorneys' fees; and

(h) For such other further and different relief as the Court deems just and proper.

Dated: May 13, 2017
New York, New York

THE LAW OFFICES OF JACOB ARONAUER

Respectfully submitted,

/s/ Jacob Aronauer
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